Supreme Court U.S.
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No. 02-977

IN THE

Supreme Court of the United States

BRIDGESTONE CORPORATION,

Petitioner,

v.

T&T TRUCK & CRANE SERVICE, INC., KENAI DRILLING, LTD., and GENE COKER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOR THE SECOND APPELLATE DISTRICT, DIVISION THREE

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *ii* of the Petition for a Writ of Certiorari, and there are no amendments to that statement.

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INTRODUCTION

In their opposition, Truckers do not genuinely challenge the appropriateness or desirability of the exercise of certiorari jurisdiction in this case. Instead, the arguments they advance mischaracterize the record and misstate the law. The underlying case remains unchallenged as the ideal tool for this Court to clarify the law of personal jurisdiction over foreign manufacturers—a subject that has received conflicting interpretations and applications since at least this Court issued its sharply divided opinion in *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987)—and to remedy the unconstitutional exercise of jurisdiction by the California courts below. Certiorari jurisdiction is proper and the writ should issue.

I. The Questions Presented Are Proper

Truckers are wrong when they suggest that the questions presented here must be verbatim the questions raised below. (*See* Opp'n at i, ii & 1).

The very case relied upon by Truckers to make this argument actually rejects it:

> It should not be surprising if petitioner's arguments in the District Court were much less detailed than the arguments it now makes in response to the decision of the Court of Appeals. That, however, does not imply that petitioner failed to preserve the issue raised in its petition for certiorari. Accordingly, we find no obstacle to reviewing the question presented in the petition

> for certiorari, a question that was very clearly considered, and decided, by the Court of Appeals.

St. Louis v. Praprotnik, 485 U.S. 112, 120 (1988) (citation omitted).[1]

There is no requirement that a petitioner's formulation of the questions presented for review be identical—word for word—to the issues as they were first articulated in the lower courts. All that is required is that the questions presented were raised and resolved below. *Cf. Glover v. United States*, 531 U.S. 198, 205 (2001). They were.

II. The Record Presented In The Petition Is Accurate

Truckers also try to persuade this Court that the record is somehow "[c]ontrary to what is stated in the Petition." (Opp'n at 2). In fact, it is Truckers who misstate the record, as the following three examples demonstrate:

NO. 1: "Bridgestone retains joint control over the distribution of its tires in California." (Opp'n at 7).

The record shows no such thing. Indeed, the trial court actually held that "the transactions in which BRIDGESTONE Corporation of Japan participated were *limited to selling the product in Japan*." (Pet. at 17a) (emphasis added). The Court of Appeal agreed. (*See id.* at 7a ("The parties' dispute turns largely on the question whether . . . Bridgestone's tire sales to

1. Although Truckers cite *Praprotnik* in pressing their argument on this issue, the *obiter dictum* that they reproduce in the opposition is actually at *Canton v. Harris*, 489 U.S. 378, 384 (1989), a case that similarly does not support the sweeping conclusion touted by Truckers.

Firestone in Japan . . . constitutes purposeful availment . . . .").
Bridgestone's control over its tires begins and ends in Japan.

NO. 2: "[C]onduct by the Petitioner . . . includes its 'advertising in the forum State,' via the internet, and 'marketing of the product through a distributor who has agreed to serve as the sales agent in the forum State,' i.e., Bridgestone/Firestone, Inc. . . ." (Opp'n at 2).

Again, the record shows no such thing. There was no finding—and no discussion—of any Internet advertising by any party in either of the opinions below. The closest statement made by the trial court was that "the marketing of the tires was accomplished by *Bridgestone/Firestone, Inc.*," not Bridgestone. (Pet. at 19a) (emphasis added). The trial court also held that Firestone was *not* Bridgestone's sales agent. (*See id.* at 17a-18a). Again, the Court of Appeal agreed. (*See id.* at 4a ("[N]o evidence showed Bridgestone sold tires in California, and . . . Firestone did not act as Bridgestone's general agent in California.")).

NO. 3: "[T]here is ample evidence in the record that the Petitioner *knew* that 25,000 of its tires were being shipped, per month, to a California-based branch of its wholly-owned [*sic*] subsidiary Bridgestone/Firestone, Inc. for distribution to approximately 450 dealers in California . . . ." (Opp'n at 2) (emphasis added).

The trial court acknowledged evidence that a Firestone distribution center "is the exclusive point of *receipt* in North America for tire products manufactured by BRIDGESTONE Corporation of Japan for redistribution [by Firestone] throughout North America." (Pet. at 17a) (internal quotations omitted & emphasis added). However, as noted, the trial court also

explained that Bridgestone's control over its tires begins and ends in Japan. (*See id.*). There is no evidence in the record that Bridgestone had any knowledge about what Firestone does with the tires once title and possession to them is transferred in Japan, including how Firestone may distribute them in the United States. The Court of Appeal similarly observed only that "Firestone's distribution center in Ontario, California *receives* at least 25,000 tires per month manufactured by Bridgestone in Japan." (Pet. at 4a) (emphasis added). There is no record evidence at all about Bridgestone's knowledge.

III. No Federal Regulations Are Relevant To This Case

Truckers also raise new arguments not passed on below and propose an untimely cross-petition. Neither of these practices should be countenanced by the Court.

The new arguments raised by Truckers are that Bridgestone "design[ed] its tires to meet U.S. importation requirements" and "conformed its tire specifications to the requirements of the forum state." (Opp'n at 2, 8-9). There is no evidence in the record to support these assertions. Moreover, none of the courts below were presented with or passed upon them. Indeed, any Bridgestone contacts with the United States government, the United States generally, or any states other than California are irrelevant to the jurisdictional issue in this case. *See International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Truckers raise regulations promulgated by the National Highway Traffic Safety Administration, including 49 C.F.R. § 551, (Opp'n at 9), but never tell the Court that the statutory

authorization for the cited regulation was ***repealed*** almost a decade ago. *See* P.L. 103-272, § 7(b), 108 Stat. 1379 (July 5, 1994).[2]

Truckers conclude their inapposite discussion of regulatory standards by proposing the following:

> Should this Court be inclined to grant certiorari, then the body of law ripe for examination is that surrounding the issue whether a manufacturer's conforming of its specifications to meet federal regulatory standards, in conjunction with evidence of an expectation that the manufacturer's articles will reach the forum state, establishes enjoyment of a benefit sufficient to satisfy the requirement of minimum contacts and to confer jurisdiction upon the forum state over the Petitioner as a matter of law.

(Opp'n at 9-10).

The Court should reject this invitation. It constitutes an improper and untimely cross-petition for certiorari. *See* U.S. Sup. Ct. R. 13.4; *see also id.* 12.5, 13.1, 13.2, & 13.5. Additionally, the issue presented was neither raised nor passed upon below. *See Glover*, 531 U.S. at 205.

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2. Even so, the last published decision to discuss both the regulation and its authorizing statute concluded that the designation of the agency for service they purportedly required was "limited to service of documents by, of and from the United States Secretary of Transportation." *Richardson v. Vokswagenwerk, A.G.*, 552 F. Supp. 73, 78 (W.D. Mo. 1982). None of this is in any way relevant to the issue before the Court.

IV. The Reasons For Granting The Petition Remain, And Are Compelling

When Truckers address the issues of the petition, it remains clear that certiorari should be granted.

In response to the petition's point that the decision below conflicts with *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); and *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), Truckers sophistically assert that "[n]owhere in the opinion of the Court of Appeal herein does the Court indicate that it is departing from the above-mentioned decisions." (Opp'n at 2). Although it would be unusual for a state intermediate appellate court to deliberately defy this Court's governing authorities and in the process announce to the world that it was doing so, that does not make the California court's departure from governing law any less apparent.

Other than by misstating that the courts below found evidence of Bridgestone's participation in a "joint control" over the distribution of its tires in the United States, as discussed above, Truckers do little to defend the Court of Appeal's imputation of Firestone's unilateral activities to Bridgestone. Indeed, the only additional argument they advance in this regard harkens back to the "effects test" announced in *Calder v. Jones*, 465 U.S. 783 (1984). This test does not apply here.

The effects doctrine applies only to *intentional* torts, as shown by the cases upon which Truckers rely. *See Calder*, 465 U.S. at 785 & 789-90 (observing in action for libel and intentional infliction of emotional harm that "mere untargeted

negligence" will not trigger the effects doctrine); *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998) (defendant "purposefully registered Panavision's trademarks" to extort fees from the plaintiff); *Yahoo! Inc. v. La Ligue Contre Le Racisme Et, L'Antisemitisme*, 145 F. Supp. 2d 1168, 1174 (N.D. Cal. 2001) ("conscious intent" of actions expressly targeted at plaintiff compelled it to censor protected content on internet); *see also Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 429 (9th Cir 1997) (refusing to apply effects test because it is confined "to intentional torts"). Truckers' argument fails.

Truckers also fail in their attempt to show uniformity in the law of personal jurisdiction among the lower courts. Indeed, Truckers selectively discuss cases from only four courts—the Fifth Circuit, the Eighth Circuit, the Eleventh Circuit and the Texas Supreme Court—in their analysis, (Opp'n at 3-4), and ignore conflicting cases from the First, Third, Fourth, Sixth, Ninth and Federal Circuits, as well as the cases from the high courts of Louisiana, Michigan, Nebraska and Utah. All of these cases are addressed in the petition. (*See* Pet. at 17-21).

In electing not to confront the diverse views evident in the cases cited in the petition, Truckers also chose not to challenge the importance of the questions presented to the bench, the bar and the public. The exercise of personal jurisdiction over foreign defendants goes to the very core of the legitimate exercise of sovereign power under the Constitution.

CONCLUSION

For all of the foregoing reasons, as well as those stated in the petition, this Court should issue a writ of certiorari to review the decision of the California Court of Appeal.

Respectfully submitted,

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